A S

UNITED
NATIONS

General Assembly
Security Council

Distr.
GENERAL

A/46/955
S/24375
12 August 1992
ENGLISH
ORIGINAL: ENGLISH/SPANISH

GENERAL ASSEMBLY
Forty-sixth session
Agenda item 31
THE SITUATION IN CENTRAL AMERICA:
THREATS TO INTERNATIONAL PEACE
AND SECURITY AND PEACE
INITIATIVES

SECURITY COUNCIL
Forty-seventh year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) until 30 June 1992. As will be recalled (see S/23999, para. 3), it was decided that ONUSAL's work in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would be the subject of a separate series of reports.

92-37672 3311c (E) 190892 200892

200892

/...

ANNEX

Report of the Director of the Human Rights Division

I. INTRODUCTION

1. In signing the Geneva Agreement on 4 April 1990, the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) expressed their shared aim of guaranteeing "unrestricted respect for human rights" in El Salvador, thereby demonstrating their clear intention of ending the human rights violations which for more than a decade had been a cause of major concern to the international community, particularly the United Nations and the Organization of American States.

2. The signing of the San José Agreement on Human Rights (A/44/971-S/21541, annex) on 26 July 1990 reaffirmed the desire of the parties to agree on immediate measures for the protection of fundamental rights and freedoms and to allow international verification of their observance. On 26 July 1991, the first anniversary of the San José Agreement, the United Nations human rights verification mission was established with a mandate to "investigate the human rights situation in El Salvador as regards acts committed or situations existing as from the date of its establishment and to take any steps it deems appropriate to promote and defend such rights" (sect. II, para. 13 of the Agreement).

3. Under the San José Agreement, the Mission was to take up its duties as of the cessation of the armed conflict. At the request of the parties, the Security Council decided by its resolution 693 (1991) of 20 May 1991 to establish the Mission as soon as possible. Its mandate included wide-ranging powers unprecedented in the history of the United Nations. As was recognized from the outset, the fact that ONUSAL was established before the end of the armed conflict made its verification duties even more complex.

4. The commitment by the parties immediately to take all necessary steps to avoid any act or practice which constituted an attempt upon the life, integrity, security or freedom of the individual demonstrated a clear awareness of the gravity of the situation. Both the history of recent decades and the persistence of internal armed conflict over a period of more than 10 years have resulted in a deeply ingrained climate of violence in El Salvador, which has undermined certain institutions and generated widespread social intolerance and general scepticism towards the law. The peace agreements undoubtedly express the willingness of the parties and of the people of El Salvador to embark on a new phase in their history, although it must be recognized that it is not possible in the space of a few months to eliminate the consequences of a turbulent past, where social tensions were resolved by confrontation and conflict rather than through dialogue and cooperation.

5. Now that the Mission's initial mandate has ended, this report is intended to provide an assessment of the situation regarding those human rights whose verification was given priority in the San José Agreement, taking as a starting point the situation in El Salvador in July 1991 and highlighting the course of current trends. It will examine the extent to which essential human rights and international humanitarian law have been respected and safeguarded through the verification duties undertaken by ONUSAL, the analysis of the statistical trends, the human rights education and promotion campaigns, the recommendations put forward, the replies of the parties and the prospects for the immediate future.

6. In performing his international verification duties, the Director of the Human Rights Division paid special attention to the valuable work done by existing organizations for the protection and promotion of human rights in El Salvador, in accordance with the provisions of the San José Agreement (para. 12). In this connection, he attached particular weight to the reports and analyses provided by these organizations on the development of the human rights situation in the country following the establishment of the Mission, and to the Mission's own work in this area.

7. ONUSAL fulfilled the preventive role assigned to it, and the civilian population gradually gained confidence in the protection afforded by the Mission. The parties themselves realized that the Mission's verification of the observance of human rights and its power to visit any place or establishment without prior notice meant that they must redouble their efforts to comply with the undertakings given in the San José Agreement.

8. Following the cease-fire, breaches of international humanitarian law were kept to a minimum and substantial improvements were recorded with regard to certain rights. However, some traces of violent behaviour continue to persist. Despite the commendable efforts of broad sectors of the population to create a climate of tolerance and détente, there are still instances of unwarranted use of force or firearms and threats of violence and intimidation, while the behaviour of a significant minority remains incompatible with progress towards lasting social peace. The challenge currently facing the Mission is, within the limits of its mandate, to help encourage the far-reaching changes vital if peace is to be consolidated and a culture of reconciliation and human rights established.

9. Now that the direct consequences of the armed conflict are receding, the main guarantor of human rights is the State, in compliance with the undertakings it has given at national and international level. All sectors of society, including FMLN, must help to create the conditions necessary to ensure that human rights are respected and guaranteed, since this is an essential part of a modern State governed by the rule of law and is vital to the building of a lasting peace.

II. CASES RELATING TO HUMAN RIGHTS

A. Right to life and to integrity and security of person

10. Provision is made for these fundamental human rights in paragraph 1 of the San José Agreement, in the Constitution of the Republic of El Salvador and in the principal relevant international instruments. In his first report, the Director of the Human Rights Division gave details of the content of these rights and the priority to be accorded to them for the purposes of international verification, in the light of the emphasis given in paragraph 1 of the San José Agreement to the undertaking by the parties to avoid any violation of these fundamental rights and of personal liberty, and to eliminate any practice involving enforced disappearances and abductions, investigate any cases which might arise and identify and punish the persons found guilty (A/45/1055-S/23037, para. 41 et seq.).

1. Summary executions or deaths in violation of juridical guarantees

11. Since 1980, the main and subsidiary bodies of the United Nations have been concerned at the situation in El Salvador with regard to the fundamental human rights covered in this section, particularly extra-legal, arbitrary or summary executions.

12. ONUSAL has noted that the figures for these violations recorded by the various human rights organizations in El Salvador showed a sharp decline in the first half of 1991 by comparison with 1990. Nevertheless, in the period from August 1991 to May 1992, the Mission received and declared admissible 1,170 complaints of violations of the right to life and to the integrity and security of the person, making it the category with the highest percentage of cases (25.83 per cent). Of these complaints, 167 concerned summary executions or arbitrary killings. The significance of the statistics given in this report is examined below (para. 78 et seq.).

13. Throughout the term of its mandate, the Mission received complaints of violations of the right to life both as part of the internal armed conflict and independently of it. Violations of the right to life which occurred as part of the armed conflict and which, depending on the circumstances, could be attributable to the State or FMLN were dealt with as breaches of international humanitarian law. In the case of violations independent of the armed conflict, ONUSAL was able to verify instances of deaths which could be divided into two categories: (a) deaths where the State and its agents might be directly responsible, either by action or omission; and (b) deaths where the State failed in its obligation to provide safeguards, as discussed below (para. 17).

14. In addition, particularly after the cease-fire in the western and central regions of the country, complaints of violations of the right to life frequently included accusations against members of the territorial service of military escorts. As members of the now disbanded civil defence, these forces are under the command of the respective regional military chiefs. The territorial service is to be replaced shortly by a new system of armed forces reserves (A/46/864-S/23501, annex, sect. I, para. 10).

15. In this connection, a paradoxical and alarming consequence of the situation prevailing prior to the Peace Agreement is the high number of arbitrary killings and violations of the integrity of the person committed in the western and central regions of the country. In general, the unauthorized use of regulation firearms by military personnel is widespread and many weapons are in the hands of civilians, including members of civil defence. It is significant that of the 309 complaints received from September to December 1991 in Chalatenango, 89 concerned violations of the right to life and the integrity of the person, whereas of the 169 complaints received from January to May 1992, 80 referred to this category of violation.

16. In the eastern and paracentral regions of the country, as in other regions, most of the violations of the right to life of which the Mission was informed bore the hallmarks of common crimes. The crimes were committed by civilians and, in a disturbing number of cases, by soldiers on duty.

17. ONUSAL noted that, in many of the cases of unnatural death, the State had failed in its obligation to provide safeguards, which was discussed at length in the Mission's third report (A/46/876-S/23580, para. 28 et seq.). The Mission considers that if the Government systematically fails to comply with the provisions of domestic and international law which require it to prevent and, where appropriate, investigate cases of summary or arbitrary executions, and bring to trial and punish those responsible, then such failure is an indication of the Government's responsibility, regardless of whether charges have been made or evidence exists concerning the direct involvement in the deaths concerned of Government officials, whether by action or omission. This observation is consistent with the remarks made by the Special Rapporteur of the Commission on Human Rights on summary or arbitrary executions. 1/ Despite a number of exceptions, this situation did not change substantially during the Mission's mandate.

18. When ONUSAL was established, the capacity of the judicial system to determine the responsibility of the perpetrators of serious human rights violations was still unsatisfactory, as had been pointed out earlier by the United Nations Commission on Human Rights (resolution 1991/75 of 6 March 1991, para. 6). In the broader area of criminal investigations there were no qualitative improvements in the performance of the judiciary and its subsidiary bodies or in the work of the Public Prosecutor's Office. However, some progress was observed in the field of verification procedures. In the case of unnatural deaths, for example, proper identification of the body and the performance of an autopsy became more frequent requirements, and were made

easier by the expansion of the Institute of Forensic Medicine. Nevertheless, many of the shortcomings in preliminary investigations highlighted in the Mission's previous reports have still not been corrected.

2. Death threats

19. Between August 1991 and May 1992, the Mission received and declared admissible 217 complaints of death threats, of which 93 were allegedly made by members of the armed forces. The number of complaints in this category remained high after the signing of the Peace Agreement. In fact, while 79 complaints were received from August to December 1991, 138 were received from January to May 1992. In some cases, the targets of this intimidation were prominent members of religious, political or trade union organizations. Some of the threats were issued by clandestine groups well known in the country for this kind of activity, such as the Salvadorian Anti-Communist Front or the Secret Army of National Salvation. The former distributed leaflets containing threats against the Mission shortly before it was established and later issued further threats against members of ONUSAL.

20. The Mission informed the Office of the Attorney-General of the Republic and the Criminal Investigation Commission of the repeated threats made by the Salvadorian Anti-Communist Front against a prominent social leader, one of which had been sent by facsimile. However, the investigation proved unsuccessful. In another case, there may have been a link between the death threats made by the Secret Army of National Salvation against a number of ministers who were members of the National Council of Churches and the subsequent arrest of two of those ministers by the former National Guard (A/46/876-S/23580, para. 27). The Mission met with the competent officials from various bodies in order to find out what measures would be taken. Once again, however, the investigation made no progress. In addition, the Minister of Defence and Public Security complained that he himself had received threats.

21. Other threats were made against private individuals by members of the armed forces, security forces or civil defence. In some cases, where there was considered to be proof that State agents had been responsible, the Mission was informed that the perpetrators had been punished. A number of victims of death threats left the country, some of them for good, while others changed their domicile. Initially, the security forces frequently denied receiving complaints of this kind and few victims dared to lodge them. In some murder cases, the death threats were designed to deter witnesses or members of the victim's family. This situation has begun to change, partly as a result of the activities of the Human Rights Division and the Police Division of ONUSAL.

22. The Mission insisted that one specific aspect of the State's obligation to provide safeguards should be the provision of effective legal or other protection for persons and groups which were in danger of extra-legal execution or had received death threats. Attention was also drawn to the special need for protection when such threats emanated from organized groups.

However, this requirement has not been observed. In its previous report (A/46/935-S/24066, para. 9 et seq.), the Mission included a detailed account of a summary execution whose victim had previously complained to ONUSAL of the death threats he had received from the First Infantry Brigade and the National Police during a period of detention which occurred less than five months prior to his murder.

3. Enforced or involuntary disappearances

23. The international community has long viewed with concern the phenomenon of enforced or involuntary disappearances in El Salvador, as shown by the fact that the activities undertaken in El Salvador by the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights have been included in the 12 annual reports it has so far submitted to the Commission. 2/ The most recent report of the Working Group, covering the year 1991, contained a statistical summary showing that a total of 2,581 cases had been transmitted to the Government of El Salvador, of which 2,207 were still outstanding.

24. The complaints received by the Working Group concerning enforced disappearances during the period 1974 to 1990 show that the phenomenon increased sharply in the early 1980s. Whereas 16 complaints were referred to the Working Group in 1978 and 127 in 1979, 462 complaints were received in 1980, 320 in 1981, 584 in 1982, the highest figure of the whole period, and 479 in 1983, while in 1984 the number fell to 123. In the second half of the 1980s, the number of cases referred annually to the Working Group remained below 100. In 1991 the Working Group transmitted to the Government 30 cases which were alleged to have occurred during that year.

25. During the first phase of its mandate, and while the armed conflict was in progress, the Mission received complaints which at first sight seemed to fall into the category of enforced or involuntary disappearances. However, almost all these complaints proved to be cases of illegal or arbitrary detention by units of the armed forces or of irregular military recruitment. In many cases the alleged disappearances occurred in military areas or areas controlled by security forces. On a number of occasions the persons concerned reappeared within a relatively short space of time, although lack of adequate information made it impossible to monitor all cases effectively. At the present time, ONUSAL is closely following the case of a National Police Officer, Félix Santos Sánchez, who was investigating a murder on behalf of the judicial authorities (registered by the Mission as complaint ORSM/478, murder of Blanca Lidia Fuentes Zepeda), and whose case may prove to be an enforced or involuntary disappearance as defined by international standards.

26. Between August 1991 and May 1992, the Mission received 24 complaints which were declared admissible and which could in principle involve enforced or involuntary disappearances. Of these complaints, 9 were received between August and December 1991 and 15 between January and May 1992. However, on

investigating these complaints the Mission has so far been unable to establish convincingly that they involve enforced or involuntary disappearances, an indication that progress is being made in the observance of the fundamental human rights covered in this section.

4. Abductions

27. FMLN has frequently been accused of abductions for different purposes, as a politically motivated practice. Between August 1991 and May 1992, the Mission received a total of 69 complaints of abductions attributed to FMLN, 49 between August and December 1991 and 20 between January and May 1992. Those figures show a decline in the number of complaints, although they have not completely disappeared. In one case submitted to the Mission the day after its arrival, FMLN admitted to ONUSAL that it was responsible for the abduction of a well-known coffee grower and issued a public communiqué justifying abduction as a valid method for demanding payment of the war tax. The Mission rejected that practice - which was apparently widespread in the past - and the justifications for it, and urged strict compliance with the commitments established in the San José Agreement (para. 1) for the total elimination of such practices. The victim was released. Another abduction for which FMLN admitted responsibility to the Mission was carried out against an officer of the armed forces, who was released upon payment of a ransom.

28. Such incidents occurred with some frequency in the Department of Usulután, especially against land owners and administrators, for the purpose of obtaining funds. On some occasions, the solution arrived at was the release of the victims through ONUSAL mediation or their release to third parties, for example to church members, or to their families. However, despite repeated complaints throughout the duration of the Mission, it could not be confirmed that FMLN was continuing to engage in such actions as a systematic practice. On some occasions it had to be pointed out to the complainants that their accusations were unfounded. Another of the earliest complaints received reported the abduction of a well-known leader of the Nationalist Republican Alliance (ARENA) who was released some time later. FMLN has always emphatically denied its participation in that incident. It must be borne in mind that in El Salvador, unidentified groups have carried out abductions for purposes of extortion and are continuing to do so, which is currently a cause for serious concern.

5. Torture and cruel, inhuman or degrading treatment or punishment

29. In the past, international organizations had received a large number of complaints regarding the use of torture and cruel, inhuman or degrading treatment or punishment in El Salvador. In general, the allegations had maintained that those practices were frequent during so-called "administrative detention". According to complaints, which implicated members of the Army as well as the Police, it was asserted that abuses were promoted by the practices

of incommunicado detention and interrogation of detainees outside official detention centres. Moreover, no criminal penalties were known to have been imposed for acts of torture. According to the Inter-American Commission for Human Rights, 3/ officials of the Salvadorian Government had admitted that during interrogations, detainees were blindfolded so that they could not recognize their interrogators later. According to the same body, 4/ information received indicated that in 1991, the armed forces and Security Forces of El Salvador were continuing to employ physical and psychological torture.

30. Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. Viewed in this light, the Mission could confirm the use of torture in a limited number of cases. The systematic nature of such abuses could not be established, however. Initially, the statistics on complaints to ONUSAL did not differentiate between allegations of torture and of cruel, inhuman or degrading treatment or punishment. Thus, from August to December of 1991, 110 complaints of violations generally categorized in that way were received. However, in analysing those cases, it was noted that the great majority of allegations tended to relate to cruel, inhuman or degrading treatment or punishment, rather than acts of torture. From January to May 1992, four complaints of torture and 105 allegations of cruel, inhuman or degrading treatment or punishment were received.

31. As reported by the Mission (A/46/658-S/23222, para. 50), in general, two requirements must be met in order for a practice to be considered systematic: numerous violations of the same kind, and support or tolerance on the part of higher authorities. The lack of criminal proceedings against the alleged culprits of such offences could be an indication of official tolerance. The Mission is unaware of any cases in which an investigation has been undertaken and criminal penalties have been imposed for torture or cruel, inhuman or degrading treatment or punishment which might constitute the crime of the use of torture, violence or unnecessary maltreatment during detention provided for in article 428 of the Penal Code of El Salvador.

32. On the contrary, it could be verified that, in some confirmed cases of abuse, the victims were forced to sign a statement exonerating the police from all responsibility. Furthermore, it must be noted that detainees are not given a medical examination upon their arrival at police stations. Nor were there any reports of cases of abuse, which, unlike torture, is not a criminal offence, where the alleged perpetrator had been systematically subjected to disciplinary or other appropriate procedures. ONUSAL was aware, however, of disciplinary action taken against one officer and two soldiers for maltreatment of civilians detained in November and December 1991 (A/46/876-S/23580, paras. 41 and 47).

33. A situation of undoubted concern has been observed with regard to cruel, inhuman or degrading treatment or punishment. Such treatment includes all abuse, whether physical or mental, including the holding of a detainee in conditions which deprive him, temporarily or permanently, of the use of any of his senses, such as sight or hearing (ibid., paras. 54 et seq.). In this

respect the Mission has been able to confirm many such abuses, attributable to a systematic practice, committed particularly at the time of capture and sometimes during administrative detention. These infractions consist of inflicting blows and punishments which can cause injury, blindfolding detainees and a generally disproportionate use of force, all of which represent a manifest failure to observe the principle of moderation by law enforcement officials. Such acts are also committed very frequently when detaining persons for misdemeanours, especially alleged vagrancy or drunkenness. In a recent case (ORSS/1467. Juan Antonio Turcios Mejía), the death of a 17-year-old youth was reported as a result of blows inflicted by municipal police officers of the town of Soyapango, who were taking him into custody. There is an eyewitness to the reported acts and the results of the autopsy conducted are compatible with the alleged cause of death.

34. The violation of the right of any person deprived of liberty to be treated humanely and with due respect for human dignity also becomes systematic in nature in municipal jails or "bartolinas" and similar National Police facilities. Currently, persons detained by the National Police and the municipal police for crimes or misdemeanours are lodged in those jails for the administrative detention period (72 hours). Frequently, they remain in jail beyond its expiration, sometimes for long periods. Conditions of detention systematically confirmed by ONUSAL violate international standards and principles, including the prohibition of the detention of minors together with adults. The conditions of lodging, nutrition and hygiene in these places are deplorable and have not improved throughout the Mission's mandate.

35. Undoubtedly, the presence of the ONUSAL Human Rights Division and Police Division has exerted a positive influence, in so far as its observers, almost without exception, have been able to visit without prior notice (San José Agreement, 14 (c)) any detainee in any location and circumstances, and this has been an undeniable guarantee for persons deprived of liberty. This may have been an important factor in the decline in torture, which was reported frequently in the past, although it has not been sufficient to overcome maltreatment as a systematic practice, as noted in paragraph 33. At the same time, the institutional transformations arising from the Peace Agreement, among them the dissolution of the National Guard and the Treasury Police, could have had an influence on the positive changes. Likewise, the fact that the armed forces have not continued to make arrests has been very important in this respect.

B. The right to due process of law

36. The broad consensus both nationally and internationally on the structural deficiencies of the Salvadorian judicial system explained the emphasis placed on the right to due process of law by the San José Agreement (para. 11), where it is considered one of the rights to whose observance the Mission should devote special attention. Likewise, the Mission's mandate includes the ability to offer its support to the judicial authorities in order to help improve the judicial procedures for the protection of human rights and due

process of law (San José Agreement, paras. 11 and 14 (h)). The Mission has addressed the matter in its four previous reports and has discussed it extensively in the latest report (A/46/935-S/24066, paras. 19 et seq.). In a sense, the cessation of armed conflict has brought to the forefront concerns with the problems of judicial protection of human rights, as indicated by the statistics of complaints received by the Mission. From August 1991 to May 1992, ONUSAL received a total of 357 complaints of violations of due process of law. However, while between August and December of 1991 only 39 complaints were received, between January and May of 1992, 318 such allegations were submitted. At the beginning of this new phase, this subject has also become a priority task for the Mission.

1. Reforms of the judicial system

37. The right to justice is essential to the guarantee of human rights and is inextricably linked to the existence of a strong and efficient judicial system. For that reason, the Mission has given special attention to the reforms of the judicial system provided for in the Mexico Agreements of 27 April 1991, and reaffirmed in the Peace Agreement of 16 January 1992. Currently, these reforms have for the most part been incorporated into the Constitution of the Republic and secondary legislation, although this process should be expressed above all through practical institutional changes, and has not yet been completed at the normative level. The legislation on the National Council of the Judiciary which, under the Peace Agreement, should have been issued 1 April 1992 at the latest, still has not been adopted. The law reforming the career judicial service has not been adopted, nor has the preliminary draft of the legal reform of the military courts been submitted. As a contribution to this reform process, the Mission has tried to explain as widely as possible, both in its verification and its dissemination activities, the principles contained in various United Nations norms on human rights in the administration of justice, especially the Basic Principles on the Independence of the Judiciary. 5/

2. Legislative reforms

38. In its previous report, the Mission began to study the process of reform of the legislation in El Salvador on criminal procedure and to formulate specific recommendations on what it identified as a set of critical issues relating to criminal justice in the country. The Mission's criteria in this area are based on the United Nations provisions on human rights in the administration of justice and on the wider doctrinal consensus reached in the region on the question of reform of the criminal justice system. Its efforts are aimed at contributing to the success of the reform process initiated in El Salvador. In this regard, the Mission attaches priority to the reform of the criminal procedure in order to bring it into line with the principles of modern legal procedure, which guarantees certain rights, while at the same time respecting the idiosyncrasies of the Salvadorian society.

39. The Mission is, however, aware that the criminal justice system, the system of criminal procedure and the system of execution or incarceration of criminals can only be studied as a whole. All the regional offices have carried out verifications of the conditions of detention in the prisons, penal institutions and detention centres referred to in paragraph 34. Many problems have been detected which indicate that in practice little regard is shown for the guidelines laid down both in domestic legislation and in international law. The Mission notes that the shortcomings identified are largely the result of the lack of human and material resources and are also part of the sequel to the conflict. Nevertheless, both the active monitoring of the situation in detention centres and the investigation of individual cases can play a positive role in making the conditions of detention more humane. Moreover, the training and information activities which can be undertaken by the Mission are likely to help strengthen the legal culture and professionalism in this area. This is an important factor in promoting greater awareness of the need for urgent changes in the criminal justice system of El Salvador.

3. Criminal investigation

40. One of the most serious deficiencies in the administration of justice in El Salvador has been the incapacity of the system to conduct an investigation of a crime which could lead to the detention, trial and punishment of those guilty of serious human rights violations. These limitations have been referred to in numerous resolutions of the General Assembly and its subsidiary organs and in the reports of the Special Representative of the Commission on Human Rights. 6/ The Mission has dealt with questions concerning the investigation of unnatural deaths in its analysis of the right to life and to integrity and security of person. This issue is also linked, however, to the right to due process of law, including the right to justice for the victims of crimes and of the abuse of power, and the prevention of extralegal, arbitrary or summary executions, which results from the proper functioning of the criminal justice system.

41. Indeed, one of the main elements in the strengthening of the judicial mechanism for the protection of human rights is a qualitative improvement in the activity of criminal investigation. The Mission has placed emphasis on this element since it began to formulate recommendations in its second report, and reference was made to it in the section dealing with the recommendations which it has made to date in fulfilment of its mandate. One brief example of the deficiencies in the area of criminal investigation is case No. ORSS/1008, on the death of the trade unionist Nazario de Jesús Gracias, which was dealt with at length in the Mission's previous report, and to which reference was also made earlier in paragraph 22 of this report. ONUSAL is closely monitoring the progress of the judicial investigation and has noted that since its last report, no significant progress has been made in the relevant criminal investigation. A further example is case No. ORSS/235 concerning Maria N., who declared that after her arrest on 5 October 1991, she had been taken to the cells of a military brigade barracks and raped repeatedly. A

medical report confirmed that she had been raped. The Criminal Investigation Commission investigated the case and, in a report dated 11 December 1991, concluded that there was not enough evidence to link the commission of the crime to specific persons.

42. Following the constitutional reform, responsibility for criminal investigations has been entrusted to the Attorney-General of the Republic, who will head a criminal investigation department; however, this does not limit the autonomy of the judge in the investigation of the crimes (article 193 (3) of the Constitution of the Republic). Under the system adopted, the Mission may also extend its cooperation to the Attorney-General of the Republic, an officer of the Public Prosecutor's Office to whom the Mission may have recourse under the terms of the San José Agreement (para. 14 (i)). Such cooperation may be offered in various fields, including evidentiary techniques and the difficulties of proof in criminal procedure.

4. Oral and public trial

43. With regard to the conduct of public hearings in trials by jury, the Mission expressed its views both in its second report, in which it analysed this phase of the trial in the "Jesuit case", and in its third report. In this connection, and independently of the fundamental reforms required in the criminal justice system, the Mission put forward a series of proposals, to which reference will be made in the section containing recommendations, in order to improve this key aspect of criminal trials.

5. Remedies of amparo and habeas corpus

44. The San José Agreement (para. 4) contains a commitment to give the fullest possible support to ensuring the effectiveness of the remedies of amparo and habeas corpus. The Mission undertook a preliminary study of this question and concluded that the remedy of amparo has been frequently used, even under conditions of armed conflict, but that the related legislation and its interpretation by the courts could be improved in various ways.

45. With respect to habeas corpus, the information received indicates that, while legislative reform may be necessary, the inoperability and discredit into which this vital remedy has fallen are primarily due to shortcomings in its application in practice. According to the law in force, the principal function of the executing officer is to have the person who has been deprived of liberty and in whose benefit the remedy has been filed appear before him. However, the practice of the courts has been to designate as executing officers law students who lack the necessary authority to perform their functions. Also, applications for habeas corpus have frequently been rejected without due consideration, sometimes verbally, on the grounds of formal defects in presentation.

46. Moreover, habeas corpus has never been an effective remedy against the enforced disappearance of persons, since the courts have required the petitioner to identify the place where the detained person was presumably held, which is clearly impossible in such cases. Similarly, habeas corpus is regulated in such a way as to render it useless in preventing torture or cruel, inhuman or degrading treatment or punishment, or the unjustified worsening of conditions of detention.

47. The Mission will continue to consider the question of the effectiveness of the remedies of amparo and habeas corpus, with a view to making appropriate recommendations in the future concerning the improvement of both the legislation and the judicial practice in respect of these fundamental human rights guarantees.

C. Right to personal liberty

48. In its verification activities, the Mission attached particular importance to respect for the commitments entered into by the Parties for the protection of the right to personal liberty (San José Agreement, sect. I, para. 2). These commitments were strengthened with the adoption by the Armed Forces General Staff, on 31 July 1990, a few days after the signing of the San José Agreement, of the "standard operating procedure concerning investigations priorities, arrests and the rights of detainees", a set of regulations which were never really implemented effectively.

1. Unlawful or arbitrary detention

49. When the Mission was first established, the practice of unlawful or arbitrary detention was widespread in El Salvador in cases linked to the armed conflict, and in a broader sense, in political cases. Unlawful or arbitrary detentions were also used in the investigation of common offences and through presumed fault on the part of the police. However, this phenomenon, which is today apparent, was at that time masked by the armed conflict then in progress. During the first period of its mandate, complaints about unlawful or arbitrary detentions were very frequent in all the regional and subregional offices of ONUSAL. Between August 1991 and May 1992, a total of 696 complaints admissible on these grounds were received. Of this number, 435 were made between August and December 1991 and 261 between January and May 1992. This decline in the number of allegations during the first five months of this year is a positive development, which is part of the improvements in the situation resulting from the signing of the Peace Agreement and the start of the cessation of the armed conflict.

50. From the commencement of its mandate and up to the time of the cease-fire, the Mission was unable to verify that presumed members of the FMLN were detained by the armed forces, including the security forces, without an order from the competent authority, and in the absence of flagrante delicto. The arrested persons were not informed of the reasons for their arrest and

were automatically held incommunicado. During the first few days of their detention, relatives were usually told that they were not in fact being detained, which meant that in the initial stages the detention was in fact an enforced disappearance. The property of arrested persons was usually attached indefinitely - even property that was totally unrelated to the investigation, such as domestic utensils. At the time of the Mission's establishment, complaints were also received of the unlawful or arbitrary detention for political reasons of trade union members, community leaders or persons associated with the legal opposition parties. Many of these detentions seemed to be carried out for purposes of intimidation.

51. A constant problem faced by the Mission prior to the cease-fire were the detentions by the Army other then in cases of flagrante delicto, the only grounds on which it could legally make arrests. Despite this, the Army, and in some departments the territorial service also, detained persons under such circumstances, thereby systematically violating their legal rights. Many of these acts were committed in the areas of conflict and their victims were civilians, including minors, generally of peasant extraction. Arrests were sometimes made at night, a practice strictly prohibited under the San José Agreement (para. 2 (d)), and detainees were subjected to intelligence interrogations in military centres, held incommunicado and without the presence of legal counsel. They were generally charged with "participation in subversive activities". Statements obtained by physical force or psychological pressure were often presented as extrajudicial confessions. Persons could remain in detention in the military units for varying periods without any legal basis.

52. This situation improved considerably with the signature on 16 January of the Peace Agreement and the commencement of the cessation of the armed conflict on 1 February 1992. Contributing factors to these positive changes were the fact that the armed forces ceased to make arrests and the dissolution of the Treasury Police amd of the National Guard. Moreover, the Mission's verification activities were an important element in correcting these abuses. The assistance and accompanying personnel provided by the Police Division of ONUSAL to the National Police also contributed to the improvement in the situation.

53. Despite this, after the cease-fire went into effect, complaints were received of arrests by members of civil defence and territorial service units, in open violation of the law and of the Peace Agreement. The law in fact does not recognize these groups as security forces and the Peace Agreement recognizes the principle that all paramilitary bodies or groups must be proscribed in a State ruled by law. The Agreement also provides for the dissolution of the civil defence and the replacement of the territorial service system by a new system of armed forces reserves. It has been noted, however, that some judges still address detention orders to the local commanders of the territorial service, arguing that there were National Police personnel in their district.

54. The problems which were previously evident in politically motivated illegal or arbitrary detentions have now shifted to detentions during the

investigation of the crime or derive from allegations concerning misdemeanours or minor offences. In such circumstances, the relatives of the detainees turn to ONUSAL, and the National Police provide information about the detentions and the reasons for them and agree to arrange an interview with the detainee only when Mission observers are present. Intervention by the Mission is frequently required in order for the detainees to be able to meet with their counsel.

55. It may therefore be concluded that in most cases far too little respect is still being shown for the provisions both of domestic law and of the San José Agreement (particularly paras. 2 (b), (c) and (e)) on the right to be arrested only if ordered by the competent authority in writing, and by officers who are identified as such, the right to be informed while the arrest is being made of the reasons for the arrest, the strict observance of the prohibition against detaining persons incommunicado and the right to be assisted without delay by the legal counsel of one's choice. Even the constitutional provision of 72 hours as the maximum period of administrative detention is sometimes not observed by the security forces. Among the reasons advanced for exceeding this peremptory time limit have been the practice of legal recesses and the unsatisfactory shift system in the courts.

56. The Mission has taken a particularly serious view of the fact that these limits have at times not been observed in cases involving minors, especially those under 16 years - the age of majority for purposes of criminal law in El Salvador - who should be remanded immediately to centres for the protective custody of juveniles. It is true that, in relation to the administration of justice for minors and the system of protective custody for minors, a set of standard-setting and institutional measures have begun to be implemented, based on a belief that is widely held by both the Government and society that an earnest effort must be made to improve the existing situation. These measures include the opening of the Tonacatepeque Penal Centre for juvenile detainees.

57. In the area of respect for personal liberty, another aspect which gives cause for concern is the activity of the municipal police, who systematically make arrests in a manner which rarely meets the minimum legal guarantees. The municipal police are answerable to the Mayor and in fact have functions that are comparable to those of the National Police, even though they are not a security body. The regulation of this police group has not been contemplated in the agreements concluded between the Government and FMLN. Nevertheless, their activities are a particularly important part of the abuses committed by the police, whose repression has extended to large sectors of the population over the past six months, through procedures that flagrantly violate due process of law.

58. Indeed, the principle of legality is not respected, access to legal counsel is denied, and no effective remedy is available against the penalties imposed by a public official known as a "police magistrate", based on an outdated police act from the year 1886. One study carried out by ONUSAL found that in a wide cross-section of public offices and special police courts, there was considerable ignorance of the legal rules applicable in the area of

procedures for administrative arrests or fines - which in turn are regulated by a law enacted in March 1990 - thereby giving rise to arbitrariness and capriciousness on the part of public officials to the detriment of those under their administration.

2. Problems of military recruitment

59. The Mission felt that irregular or arbitrary recruitment violated the right to personal liberty and dealt extensively with the subject in its second report (A/46/658-S/23222, paras. 107 et seq.). There were a large number of complaints involving the armed forces in all regions, especially in conflict zones like the Department of Chalatenango in the north and the Departments in the east of the country, although at the end of last year they increased also in the western region. Between August 1991 and May 1992 a total of 491 recruitment complaints against the armed forces were recorded. Of these, 355 were brought between August and December 1991, and 136 between January and May 1992. The Mission raised the need for legislation on the matter, since the two Ministry of Defence instructions regulating military recruitment procedures and exemptions from compulsory military service were not widely known and did not remedy the improper procedures. The work done by the ONUSAL observers was extremely important in helping to secure the discharge of irregularly recruited persons who met the requirements for exemption from military service stipulated in the second such instruction. Now, as a result of the Peace Agreement, legislation on the subject should soon be enacted.

60. With reference to FMLN, the Mission concentrated on the recruitment and participation in hostilities of children under the age of 15, banned by Additional Protocol II to the Geneva Conventions of 1949 (art. 4.3 (c)). Despite the small number of complaints ONUSAL observers were able to verify that huge number of children under 15 were in the FMLN ranks. When this situation was taken up with the Political and Diplomatic Commission of FMLN, it pledged to respect the international norms in force, which did not entirely prove to be the case. Although in several instances it was ascertained that the enlistments had been voluntary and in others it was not possible to establish the age of the minors, this prohibited recruitment practice was observed during the course of the conflict. As the Mission pointed out in its previous report (A/46/935-S/24066, para. 1), irregular recruitment, on the part of both the armed forces and FMLN, gradually ceased with the signing of the Peace Agreement of 16 January 1992.

3. Freedom of movement

61. The Mission felt that this right should receive special attention in the case of displaced persons and returnees, and in conflict zones (San José Agreement, paras. 7 and 8). The topic was dealt with extensively in the third report (A/46/876-S/23580, paras. 91 et seq.), which underscored the complexity of monitoring the freedom of movement of persons and goods before the cessation of the armed conflict. The complaints it received, directed for the most part against the armed forces, prompted ONUSAL to take several steps in

keeping with its mandate (San José Agreement, para. 13). The Mission's actions in this field led to a more flexible imposition of the military controls that were impeding freedom of circulation, and gradually brought about a substantial improvement in the situation. Instances were found in which FMLN as well restricted the right to freedom of movement by cutting off tracks and main roads in various parts of the country. As the Mission indicated in its previous report (A/46/935-S/24066, para. 1), freedom of movement was completely restored with the signing of the Peace Agreement on 16 January 1992.

D. Freedom of expression

62. The San José Agreement guarantees freedom of expression and of the press, the right of reply and the activities of the press, and gives priority to their monitoring (paras. 6 and 11). Between August 1991 and May 1992, the Mission received 20 complaints involving freedom of expression. Of these, five were submitted between August and December 1991 and 15 between January and May 1992. As these figures indicate, it had to investigate the observance of this right in only a few cases. Even though this may indicate that freedom of expression as a human right is generally respected, all the sources consulted agreed that the fact that to date there has been no legal regulation of the right of rebuttal or reply constituted a serious restriction on the full exercise of this right. Here it must be borne in mind that the right of reply, covered by the San José Agreement, is also recognized in the Constitution of the Republic of El Salvador (art. 6) and in the American Convention on Human Rights (art. 14). It should, moreover, be pointed out that the National Commission for the Consolidation of Peace (COPAZ) is currently studying a preliminary draft of the "Act Guaranteeing Freedom of Expression and Dissemination of Ideas", which regulates, inter alia, the right of reply.

E. Freedom of association

63. When in its first report the Mission considered what would be the nature of its mandate under the San José Agreement with regard to freedom of association (para. 5), it referred to the regulation of the right in national and international law (A/45/1055-S/20337, para. 49). At the time the Mission felt that its mandate included verification of the right of everyone to freedom of association for all lawful purposes and of the full observance of trade union freedom. From August 1991 to May 1992, 37 complaints involving freedom of association were received, 13 of which were brought between August and December 1991 and 24 between January and May 1992. However, the priorities demanded by the armed conflict in the country delayed a systematic, intensive monitoring of this right until mid-March 1992.

64. In its third report (A/46/876-S/23580, paras. 105 et seq.), the Mission reviewed the provisions covering freedom of association in El Salvador under the Constitution, international treaties and domestic legislation and described difficulties that labour unions and civilian associations were

experiencing in gaining legal recognition. When the regional offices began their monitoring, they discovered that these difficulties stemmed in large part from social polarization in the aftermath of the conflict, the scant publicizing of the regulatory provisions, their overly strict interpretation by the Government and the lengthy process involved in obtaining legal recognition of juridical personality. The political parties were not affected to a major extent by this situation, and the process of their recognition by the Supreme Electoral Court went forward without major stumbling blocks.

65. With regard to the State's obligation to guarantee full labour union freedom, a key case is that of the workers in a large company who were denied juridical personality by the Ministry of Labour, on the grounds that their trade union's establishing document did not follow proper form. The company then ordered the closing of its factories on 13 February 1992 and the wholesale dismissal of 3,200 workers. Recently, that same company reopened its doors but, according to trade union sources, rehired only 1,700 workers. According to the same sources, the entire leadership of the trade union and all the union members were among the 1,500 remaining workers who were permanently dismissed.

66. During last April and May, complaints of dismissals increased, apparently in relation to trade union activities by workers. A disquieting aspect of this situation has to do with the members of the FEASIES trade union in particular: the continued death threats against some of its leaders. The Mission is troubled by this because of the summary execution of one member of this trade union, referred to in its fourth report (A/46/935-S/24066, paras. 9 et seq.).

67. Recently, the Constitutional Division of the Supreme Court of Justice declared unconstitutional the approval of the Executive Branch establishing a Register of Foreign Non-Governmental Organizations on the grounds that the controls it meant to establish by administrative regulation could only be established through the Legislative Branch. This judgement is not only a commendable reaffirmation of the republican principle of the separation of powers but also a defence of the guarantees that must be built up around the freedom of association.

F. Identity documents

68. In its previous report (A/46/935-S/24066, para. 39), the Mission had welcomed the enactment of the two legislative decrees designed to deal with the situation of undocumented persons in the country. These are Decree No. 205 on the "Special Transitional Act Establishing the Civil Status of Undocumented Persons Affected By the Conflict", and Decree No. 204 amending the "Act on the Replacement of Registers and Entries in the Civil Registry", which have been in force since 24 March and 1 April 1992 respectively. Regulations implementing the first of these legal provisions, Decree No. 205, were enacted recently, on 8 July 1992. On the other hand, considering that this legal provision will be in force for only one year, efforts clearly need

to be stepped up to implement it speedily and effectively. The Mission, which addressed the issue of the civil status and identity documents of undocumented persons in all its earlier reports, has always underscored the basic importance of resolving this problem for all civil status and employment purposes and also for the exercise of political rights, including participation in future elections.

III. SITUATIONS RELATING TO INTERNATIONAL HUMANITARIAN LAW

69. The Mission addressed questions relating to international humanitarian law in El Salvador in all its reports. Complaints of violations of international humanitarian law were frequent while the armed conflict was in progress and fell significantly as the conflict waned, starting last December.

70. In all, ONUSAL received 502 complaints of such violations, 399 from August to December 1991 and 103 from January to May 1992. Of these allegations, 175 involved actions attributed to the armed forces and 301 to FMLN. Between August and December 1991, 171 complaints were received against the armed forces, and in January 1992 there were four. It should be noted that between February and May 1992 no complaints were made against the armed forces for this type of violation. On the other hand, between August and December 1991, 205 allegations of such violations by FMLN were received, and 96 between January and May 1992.

71. ONUSAL established criteria for monitoring the observance of international humanitarian law under the San José Agreement (A/45/1055-S/23037, paras. 17 et seq.) and, as one of its first acts in this connection, it had to deal with two serious cases illustrative of the impact of the armed conflict on the rights of the civilian population (ibid., paras. 58 et seq.). These two cases - in which action by members of the armed forces was alleged to have claimed victims in two returnee communities - demonstrated from the outset the difficulties in monitoring the San José Agreement before the cessation of armed conflict. These difficulties, above all in establishing the facts, were considerable until the cease-fire came into effect. They also had to be dealt with without the help of any known precedent, given the newness of the human-rights-monitoring tasks assigned to the Mission.

72. The Mission investigated instances of attacks on the civilian population attributed to the armed forces, determining that they were relatively infrequent (A/46/658-S/23222, paras. 54 et seq.). ONUSAL also investigated a summary execution attributed to FMLN (ibid., paras. 62 and 63). The acts or threats of violence imputed to FMLN were of various kinds. When FMLN accused certain persons of having been informers for the armed forces, the Mission considered that the fundamental guarantees in penal prosecutions stipulated in Additional Protocol II (art. 6) were not being observed. The Mission further considered that FMLN threats against officials trying to do their job in conflict zones were inadmissible if they threatened the integrity and security of person, but that the re-establishment of public administration in such

zones should be a subject for the negotiating table because of its political nature (ibid., para. 83).

73. The Mission received numerous complaints against FMLN for its imposition of the so-called "war tax". On several occasions, action by ONUSAL helped put an end to such demands. In some cases, FMLN denied involvement but put forward various political arguments to justify the practice. The Mission considered that it was not its responsibility to weigh those arguments, but made it clear that there could be no tolerating methods that might constitute threats of violence against the security and integrity of persons (ibid., para. 88). During the same period, sabotage of the nation's electrical system, attributed to FMLN, took on serious proportions. ONUSAL felt that actions were not covered by its verification mandate, but that they could affect the exercise of certain rights by broad sectors of the civilian population (ibid., para. 89).

74. ONUSAL appealed to both parties to refrain from laying mines that could harm the civilian population and, where appropriate, to take all necessary steps to remove them (ibid., para. 74).

75. The Mission recalled when considering a summary execution carried out by FMLN (A/46/876-S/23580, paras. 110 et seq.) that although international humanitarian law recognizes the right of insurgent forces to conduct trials it requires the observance of a series of minimum guarantees. Similarly, in a case involving the armed forces, the Mission underscored the obligation of the parties to provide immediate protection and care to the wounded (ibid., para. 127).

76. As to the protection of the civilian population, the Mission considered that, in certain cases, the armed forces had not taken the necessary precautions in their attacks. Where FMLN was concerned, the Mission felt that in specific cases it had violated established norms on the precautions to be taken against the effects of attacks (ibid., para. 171).

77. ONUSAL expressed the hope that recommendations to respect fundamental guarantees of humane treatment would no longer be necessary in future. Unfortunately, this expectation was not entirely realized, and in its fourth report, covering the period between 1 January and 30 April 1992, the Mission was again obliged, despite the lower number of complaints mentioned earlier, to include a section on the subject referring to a communication charging FMLN with one case of summary execution (A/46/935-S/24066, paras. 40 et seq.). The Mission pointed out that the protection granted by international humanitarian law remains in effect throughout the period of the cessation of the armed conflict (ibid., paras. 40 and 56).

IV. STATISTICAL ANALYSIS OF COMPLAINTS

78. The statistical tables drawn up by the Human Rights Division show the overall picture of the complaints submitted to ONUSAL and declared admissible because they report actions that prima facie are in presumed violation of the human rights covered by the San José Agreement. As indicated throughout, the figures within each category should not be taken as confirmation of the actual occurrence of the alleged violations, because the complaints are currently being investigated. The purpose of giving these figures is to show the flow and trends of the complaints, seen as an indicator of the human rights areas most applicable in the country. The statistical methodology, based on the pattern of complaints, was adopted in view of the fact that the allegations made in the complaints require more time for investigation than the time between Mission reports.

79. In the first 10 months since the Mission was set up (August to May), a total of 4,528 complaints were received, 3,307 of which, or 73 per cent, were declared and processed as admissible because they contained pertinent allegations according to the criteria established in the San José Agreement. For purposes of analysis, there follow figures for complaints under the main categories, compared over two periods selected because they correspond to the status of the armed conflict.

Complaints by categories

	August-December 1991	January-May 1992	Total
Executions or deaths	62	105	167
Death threats	79	138	217
Enforced disappearances	9	15	24
Abductions	49	44	93
Torture or maltreatment	110	109	219
Illegal detentions	435	261	696
Restrictions on freedom of movement	55	17	72
Violations of due process of law	39	318	357
Violations of freedom of association	13	24	37
Violations of freedom of expression	5	15	20
Violations of humanitarian law	399	103	502

80. The largest group of complaints, 25.8 per cent, consisted of allegations concerning the right to life and to security and integrity of person, comprising a total of 1,170 cases. Within that figure, attention should be drawn to the categories of executions or deaths, which constitute 14.3 per cent (167 complaints), and of death threats, with 18.5 per cent (217 complaints). During the period of the cessation of the armed conflict (January to May 1992), there was a disturbing rise in the number of these complaints (see table). This is something of a paradox, indicating the existence of a form of violence not linked to the armed conflict and which is diverse in origin and nature. Particular attention must be given to manifestation of organized crime in this period. The relative stability in the number of complaints of this kind lodged since December 1991 suggests that this phenomenon will continue and should be closely monitored by the Mission.

81. A comparative study of the figures for the period and of their variation shows that, to a certain extent, they reflect the changes experienced by Salvadorian society since the launching of the Mission. The decline in the number of verified complaints noted at the end of 1991 can be attributed to the dramatic decrease in the number of alleged violations of international humanitarian law and instances of irregular recruitment, as a consequence of the Peace Agreement. The effect of the Peace Agreement is also reflected in the drop in the number of complaints alleging abductions by FMLN.

82. With regard to personal liberty, representing 14.7 per cent of the complaints, the number of reported detentions dropped considerably during the period from January to May 1992 (see table). This can be attributed to the decline in the number of political complaints and complaints connected to the armed conflict. Currently most of the complaints either concern detentions connected with ordinary offences or alleged misconduct by the police.

83. As explained in the corresponding section, the low number of complaints concerning torture is an encouraging sign, indicating that torture is no longer being systematically practised. On the other hand, the number of complaints concerning cruel, inhuman or degrading treatment or punishment continues to increase.

84. Mention must be made, finally, of the large number of complaints received since January 1992 relating to violations of due process of law. The majority of these demonstrate an inadequate response to applications for the administration of justice submitted by members of the community to the judicial authorities, the Public Prosecutor's Office and the auxiliary bodies. This situation is being closely monitored by the Mission.

V. EDUCATIONAL AND INFORMATIONAL CAMPAIGN ON HUMAN RIGHTS

85. The Mission's mandate includes the power to design and implement an educational and informational campaign on human rights and on the functions of the Mission itself (San José Agreement, 14 (j)).

86. During the months following the launching of ONUSAL, the educational

strategy focused on popularizing the San José Agreement and the functions of the Human Rights Verification Mission and on promoting interest among Salvadorian society in the issue of human rights and fundamental liberties. At the time the armed conflict was still continuing, and the campaign helped contribute to a climate of detente and to the gradual restoration of confidence in the legal and participatory measures for the protection of human rights.

87. The main objectives of the Mission's educational team were training and the promotion and dissemination of knowledge about human rights. Efforts were made to strengthen social organizations, with a view to achieving a multiplier effect in the dissemination of knowledge and basic experience in the protection and promotion of human rights. Training courses were held for human rights extension workers in various social sectors and State bodies were made more aware of the duties incumbent upon them in respect of the guarantee of fundamental rights and freedoms.

88. For these purposes, it was necessary to design and produce teaching materials and to develop texts appropriate to the social characteristics of those being trained. The training activities were targeted, inter alia, at people in non-governmental organizations, communities, cooperatives, trade unions, priests, members of the clergy and pastoral workers, secondary-school pupils, university students and primary and secondary schoolteachers. An intensive training programme was carried out for the armed forces, FMLN and, to a lesser degree, the security forces still in existence. At the same time, seminars were held for members of the judiciary and the Public Prosecutor's Office, including the National Council for the Defence of Human Rights.

VI. RECOMMENDATIONS

89. The Mission's mandate included the power to make recommendations to the parties on the basis of any conclusions it had reached with respect to cases or situations it might have been called upon to consider (San José Agreement, para. 14 (g)). Such recommendations have been contained in all the Mission's reports and, from the second report onwards, they have been the subject of a separate section (A/45/1055-S/23037, paras. 57 and 68; A/46/568-S/23222, paras. 146 et seq.; A/46/876-S/23580, paras. 150 et seq.; A/46/935-S/24066, paras. 46 et seq.).

A. Human rights

1. Right to life and to integrity and security of person

(a) Summary executions or deaths in violation of juridical guarantees

90. It was recommended that the National Police should be provided with the necessary material resources to carry out its functions and to ensure that it maintains professional standards in carrying out proper investigations. The Mission recommended that judges should use the powers of investigation

accorded under the law and should improve coordination with the National Police. In cases of violent or suspicious deaths, the Mission recommended that the judge must make an immediate visual inspection, the body must be examined and a thorough autopsy must be performed. The Mission also recommended that the judges of first instance should personally conduct the investigations in cases that have given rise to serious social unrest and in particular to encroachments on the right to life.

91. In one of the cases reviewed, the investigation of the complaint concerning group summary executions in El Mozote, Department of Morazán, in December 1981, the Mission recommended that the skeletal remains should be exhumed with the necessary precautions and should be studied according to systematic anthropological techniques. For these purposes, it recommended the use of the services of international experts in forensic anthropology, who could be present, together with local professionals, to supervise the exhumation and laboratory analyses. It also recommended that all possible witnesses of the alleged incidents must be found and interviewed and that all those potentially implicated in the reported summary executions should be removed from the investigation.

92. The Mission stressed that the autonomy and independence of the Public Prosecutor's Office should be strengthened. To this end, it recommended that prosecutors should play an active role in initiating proceedings and investigating crimes and that the Attorney-General of the Republic should use all the powers available to him under the judicial system, including that of appointing special commissions (Constitution, art. 193 (7)), which could be done selectively to clear up relevant cases. At the same time, the Mission recommended that a register of victims of deaths from other than natural causes could be established . Among recent special legal instruments, the Mission drew attention to the United Nations Guidelines on the Role of Prosecutors and, in particular, those concerning prosecutors in criminal cases.

93. The Mission also repeated its recommendation that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, endorsed by the General Assembly in its resolution 44/162 of 15 December 1989, should be fully observed.

(b) Death threats

94. Emphasis was placed on the need to provide effective protection for the victims of death threats and to implement measures to halt such practices, such as those established by the General Assembly Principles referred to in the previous paragraph. Among such measures, the Mission recommended that measures should be taken to identify the authors of flyers signed by apparently clandestine organizations and adopt regulations prohibiting the radio or television broadcasting of threatening messages, without prejudicing the liberty of the press.

(c) Enforced disappearances

95. The Mission recommended that simple, flexible mechanisms should be set up to enable complainants to ascertain the whereabouts of the person concerned quickly. When the arrests were carried out by the armed forces, it recommended systematic reporting to the Detainee Information Department set up by the Supreme Court of Justice.

(d) Abductions

96. The Mission reiterated that abduction, like the enforced or involuntary disappearance, is a violation of the San José Agreement, and stressed the need for immediate measures to eliminate this practice.

(e) Torture and cruel, inhuman or degrading treatment or punishment

97. ONUSAL recommended that in all verified cases of such abuses, legal proceedings should be instituted to investigate the facts and to detain, prosecute and punish the perpetrators, in accordance with domestic and international law. It also repeated its recommendation that the periods of administrative detention provided for in domestic law should be strictly adhered to and that incommunicado detention, which is prohibited by the San José Agreement, should be prevented. At the same time, the Mission recommended that, in setting up the new National Civil Police, account should be taken of the legal safeguards against torture and other cruel, inhuman or degrading treatment or punishment, to ensure that future members of the police were given appropriate training.

2. Right to due process of law

98. The Mission took note of the public hearing in the Jesuit case, a legal action of historic importance in El Salvador. An extensive analysis of this procedural act, and of its successes and failures from the point of view of the criminal justice system, was provided in the Mission's second report (paras. 128-142). Note was also taken of the public hearings in other cases which revealed the judicial practices at work in the trial stage of criminal proceedings. This monitoring work by the Mission led it to recommend that the judge should give the members of the jury guidance in understanding the list of evidence in a case and should help them weigh evidence and prepare them properly for the exercise of their functions. The Mission also recommended that the judge should comply strictly with the provisions of the law requiring that the summary should be read out in a manner that is clear and comprehensible to the members of the jury. It also recommended that the judge, in all cases, should ask the members of the jury whether they wish to question the accused or any of the witnesses who have already appeared on the stand.

99. In addition to the recommendations on strict respect for domestic law and the United Nations principles on the collection of evidence, already referred to in connection with summary executions, the Mission's fourth report contains a series of recommendations designed to improve legal measures for the safeguarding of human rights and to enhance respect for the due process of law. The recommendations cover extrajudicial confessions, administrative detention, incommunicado detention, the right to legal counsel, pre-trial detention and delays in the administration of justice. The recommendations cover both specific measures which could be taken on an immediate basis, and proposed legislative reforms, training courses or efforts to strengthen the organization of the administration of justice and of the Public Prosecutor's Office, to be implemented at a later stage. A more detailed consideration is contained in the relevant section of the report in question (A/46/935-S/24066, paras. 48-53).

3. Right to personal liberty

100. Where the arrest of juveniles is concerned, it was recommended that the authorities should hand minors over to the juvenile courts without delay and that adults and juveniles should be confined separately in detention centres. At the same time, the Mission recommended increased supervision of police officials and juvenile reform centres and improved staff training.

101. During the conflict the armed forces were recommended to refrain from the practice of making arrests without legal justification and to confine restrictions on freedom of movement to what was necessary to ensure the safety of the civilian population. In regard to military recruitment, it was recommended that wide publicity be given to the Ministry of Defence regulations on recruitment procedures and exemptions from military service should be widely publicized and that the relatives of recruits should be informed through a speedy and flexible mechanism. The Government was also advised to enact without delay the special law on compulsory military service provided for by the Constitution. FMLN was recommended to observe the rules of international humanitarian law concerning the prohibition of the recruitment of minors under the age of 15 and their participation in hostilities.

4. Personal documentation

102. The adoption of legislation to regularize the situation of undocumented persons is a positive response to the Mission's repeated recommendations to that effect. Without prejudice to this, emphasis is placed on the recommendation to facilitate civil status registration in practice and the intervention of the Central Board of Elections - now the Supreme Electoral Tribunal - in order to facilitate access to microfilmed archives.

B. International humanitarian law

103. With regard to the norms of humane treatment, it was pointed out that persons who do not take part directly or who have ceased to take part in hostilities are protected by article 3 which is common to the four Geneva Conventions of 1949 and by Additional Protocol II thereto. It was emphasized that the wounded and the sick are entitled to immediate protection and care. It was pointed out that, while international humanitarian law allows insurgent forces to hold trials, it imposes a number of minimum mandatory requirements: existence of an independent and impartial court, respect for the principle of legality, procedural guarantees and, in particular, the right of defence.

104. With regard to the protection of the civilian population, attention was drawn to the responsibilities of the armed forces in cases where they had not taken the necessary precautions in their attacks, and to those of FMLN where it had not respected the norms on precautions against the effects of attacks. Similarly, the Mission reminded the parties that they must not use mines indiscriminately.

105. The Mission recommended the parties, throughout the entire period of the cessation of the armed conflict, to comply strictly with international humanitarian law, particularly regarding the fundamental guarantees of humane treatment and the protection of the civilian population.

C. War tax

106. Although the Mission considered that the question of the so-called "war tax" falls outside its mandate, it called on FMLN, in those cases in which it had acknowledged responsibility, to avoid any action which might jeopardize the process of peace and national reconciliation and to refrain from violating rights to which the San José Agreement gave priority, which could occur in the course of levying the so-called war tax.

D. Follow-up to recommendations

107. The main means of instigating action by the parties available to the Mission is the making of recommendations. For their part, the parties have undertaken to give their earliest consideration to any recommendations made to them by the Mission (San José Agreement, para. 15 (d)). Thus, in addition to sending a series of notes last January to the Government of El Salvador and to FMLN requesting them to provide information on the action taken by them in response to the recommendations made, the Mission has made a point of following up the matter more actively. This was done through regular working meetings with the parties, correspondence in writing on individual subjects and the participation of the Mission in seminars and workshops on topics that were considered to be of importance.

108. Nevertheless, and as shown by the evaluation made in this report, serious problems remain concerning the observance of the fundamental human rights to life, integrity and security of person, due process of law and the right to personal liberty; complaints - in one case, an accusation of the utmost gravity - are still being received on infringements of international humanitarian law. In other words, the Mission's recommendations appear so far to have been complied with in a piecemeal rather than a systematic manner and to have led to the resolution of individual cases rather than to general and qualitative transformations. This is indicative of the magnitude of the task that still remains to be carried out, a subject to which reference will be made in the conclusions.

VII. CONCLUSIONS

109. The cessation of the armed conflict has led to major changes in regard to recruitment and freedom of movement, and since its commencement almost no civilian victims or military casualties have been recorded. It must be pointed out that perceptible changes in these respects had begun even before the agreements were signed.

110. One matter of concern, however, is the lack of any institutional response with regard to the protection of the right to life and to integrity and security of person. No significant progress has been made in the systematic investigation of attempts on human life or on the eradication of the practices of intimidation and threat by organized clandestine groups.

111. It is evident that not many improvements in the present situation will be possible in the immediate future; this is due in part to the shortage of economic or human resources, to the need for legislative reforms or the enhancement of personnel training in various State sectors. But certain measures could be adopted quickly to modify behaviour which violates human rights. For example, judicial action could be initiated against the presumed perpetrators of torture or of cruel, inhuman or degrading treatment or punishment. Similarly, it would be possible to provide clear national policy guidelines to ensure strict compliance with the legal rules on detention with reference to legal aid for detainees and to the prohibition of incommunicado detention. Similarly, the norms which refuse to recognize the validity of statements made under duress could be observed, and pre-trial detention imposed only when it is necessary in order to ensure the presence of the accused and to avoid difficulties in the investigation. The conditions under which minors are detained should also be monitored.

112. Although the presence and recommendations of the Mission, through personal contact with the parties and through periodic reports, have undoubtedly produced positive changes, it is necessary that behaviour which respects human rights should be dependent not solely on the ad hoc intervention of the Mission, but rather on the will of the State expressed in clear guidelines resulting in consistent behaviour.

113. It must be recognized, however, that, in spite of the serious concerns that have been expressed on the subject of summary executions, violent death and threats, the overall human rights situation in El Salvador has improved during the past year. It cannot be claimed that there is at present any systematic practice involving torture, enforced disappearances or abductions. But this positive trend by no means indicates the firm and definitive consolidation of a State ruled by law. In particular, fundamental guarantees to ensure the right to due process of law require far-reaching reform both of the structures of the judicial system, the Public Prosecutor's Office and the auxiliary bodies, and of criminal law and procedure, the law relating to minor offences and of prison legislation. The right of habeas corpus has still not become an effective means of protecting individual liberty and the integrity and security of the person. Illegal and arbitrary detention continues to be practised, cruel, inhuman or degrading treatment or punishments are still applied and people are detained under inhuman conditions. There are still no satisfactory guarantees of freedom of association and trade union freedom. The effective application of the right of displaced persons and returnees and of the inhabitants of former conflict areas to be provided with adequate personal documentation, recognized by recent legislation, is being seriously delayed.

114. In order to promote the consolidation of the advances achieved, it is necessary to strengthen the machinery of reconciliation in a society which is still highly polarized, and progressively to create a climate of confidence in institutions. The recently created National Counsel for the Defence of Human Rights forms part of the monitoring arrangements needed by El Salvador. This institution has not yet become fully operational and it will be some time before it begins to play its role. The Mission has begun to support it and is to continue to do so until such time as the Counsel becomes a highly regarded participant in dialogue with the State and with society and takes direct action to rectify situations in which human rights are violated. The cooperation of ONUSAL is expected to enable this new institution progressively to take over the present task of the Mission, and eventually to replace it when its mandate comes to an end.

115. A fully independent judiciary and a strong and active Public Prosecutor's Office with a professional and effective criminal investigation body operating under its guidance are the other indispensable elements for the full enjoyment of human rights. In compliance with paragraph 14 (h) of the San José Agreement which confers on the Mission a mandate "To offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of law", the Mission has supported the judicial authorities through seminars and advice which should serve as a basis for extending the contribution of ONUSAL to other participants in the legal process, prosecutors, attorneys and lawyers in particular.

116. The structural reform of the administration of justice, of the Public Prosecutor's Office and of the auxiliary bodies, which resulted from the Peace Agreement and from measures provided for in the Constitution and in secondary

legislation, implies a series of changes to which reference has already been made in the fourth report. The Mission has begun to verify compliance with the agreements on this matter and now has to extend its support to the complex task of the transformation of the judicial system. The dissemination of the special instruments adopted by the United Nations congresses on the prevention of crime and the treatment of offenders, between 1955 and 1990, may have a significant contribution to make to the change that has now begun, subject to the realities of the situation in El Salvador. Similarly, the Mission is in a position to make a worthwhile contribution to the process of penal reform and the reform of criminal procedures currently in hand through the dissemination of provisions of the United Nations regarding human rights in the administration of justice which are the expression of a broad international consensus on the subject. It is of fundamental importance that this task be followed through in the near future so as to achieve the twofold objective, set forth in the San José Agreement, of improving the judicial protection of human rights and the rules of due process of law.

Notes

1/ E/CN.4/1991/36, para. 591.

2/ E/CN.4/1992/18.

3/ Annual report 1989-1990, p. 151.

4/ Annual report 1991, p. 213.

5/ E/CN.4/Sub.2/1991/26.

6/ E/CN.4/1992/32.

APPENDIX I

Table 1. Complaints received by ONUSAL a/

	August/ September	October	November	December	Total
Summary executions					
Attributed to members or former members of the armed forces	16	2	4	3	25
Attributed to persons unknown	6	2	6	23	37
Death threats					
Attributed to members of the armed forces	2	21	10	14	47
Attributed to the Salvadorian Anti-Communist Front	2	1	1	5	9
Attributed to persons unknown	2	10	3	8	23
Enforced or involuntary disappearances					
Enforced disappearances	1	6	1	1	9
Disappearances (missing persons)	7	17	21	30	75
Abductions attributed to FMLN	10	16	14	9	49
Torture or cruel, inhuman or degrading treatment or punishment	38	31	21	20	110
Violations of integrity of person					
Injuries attributed to the armed forces	5	5	13	16	39
Acts or threats of violence	36	22	15	31	104

Table 1 (continued)

	August/ September	October	November	December	Total
Violations of personal liberty					
Illegal or arbitrary detention b/	119	120	112	84	435
Restrictions on freedom of movement	13	24	11	7	55
Violations of due process of law			15	24	39
Illegal entry	18	8	2	1	29
Violations of freedom of association	1	7	3	2	13
Violations of freedom of expression	-	1	1	3	5
Humane treatment					
Attempted murder attributed to the armed forces	3	8	7	3	21
Attempted murder attributed to FMLN	3	13	1	7	24
Unattributable attempted murder	-	1	5	2	8
Death threats attributed to FMLN	1	13	4	8	26
Indiscriminate attacks					
Attributed to the armed forces	12	30	3	11	56
Attributed to FMLN	5	5	7	4	21
Unattributable	8	5	-	2	15
Acts or threats of violence intended primarily to intimidate the civilian population					
Attributed to the armed forces	18	12	49	15	94
Attributed to FMLN	38	34	36	26	134

Table 1 (continued)

	August/ September	October	November	December	Total
Other situations					
Recruitment by the armed forces (minors)	11	17	38	10	76
Recruitment by the armed forces (proper age)	57	105	96	21	279
Recruitment by FMLN (minors)	4	14	6	-	24
Recruitment by FMLN (non-minors)	-	2	5	3	10
Total admissible complaints	398	521	489	373	1 781
Inadmissible complaints	56	105	74	119	354
Total complaints received	454	626	563	492	2 135

a/ The total or partial figures included refer to complaints received and should not be construed as an affirmation by ONUSAL that the violations actually took place.

b/ This figure includes the 110 cases of torture or cruel, inhuman or degrading treatment or punishment.

Table 2. Complaints received by ONUSAL a/

	January	February	March	April	May	Total
Summary executions						
Attributed to members or former members of the armed forces b/	7	4	4	3	1	19
Attributed to others	4	7	9	5	5	30
Attributed to persons unknown	12	11	16	7	10	56
Death threats						
Attributed to members of the armed forces	13	11	6	6	10	46
Attributed to others	6	8	16	17	14	61
Attributed to persons unknown	5	9	6	6	5	31
Enforced or involuntary disappearances						
Attributed to members of the armed forces	3	2	3	-	3	11
Attributed to persons unknown	3	-	1	-	-	4
Abductions						
Attributed to FMLN	7	4	6	2	1	20
Attributed to others	5	4	-	-	1	10
Attributed to persons unknown	3	-	1	5	5	14
Torture	1	2	-	-	1	4
Cruel, inhuman or degrading treatment or punishment	23	20	19	21	22	105
Other violations of those rights						
Attributed to members of the armed forces	11	14	18	22	14	79
Attributed to others	6	7	11	4	9	37
Attributed to persons unknown	26	23	25	24	18	116
Violations of due process of law	49	76	66	65	62	318
Violations of personal liberty						
Illegal or arbitrary detention	66	43	57	45	50	261
Restrictions on freedom of movement	7	1	4	4	1	17
Irregular recruitment	100	26	5	4	1	136

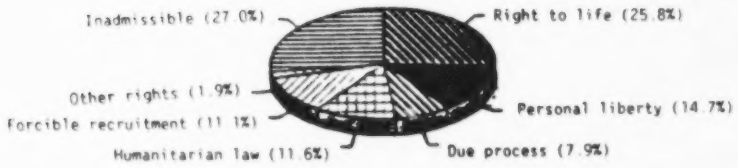
Table 2 (continued)

	January	February	March	April	May	Total
Other violations of personal liberty						
Attributed to the armed forces	-	-	-	3	3	6
Attributed to others	-	-	-	2	1	3
Violations of freedom of association	6	1	7	6	4	24
Violations of freedom of expression	-	-	6	5	4	15
Humanitarian law						
Humane treatment						
Violations attributed to the armed forces	3	-	-	-	-	3
Violations attributed to FMLN	4	3	4	5	6	22
Civilian population						
Violations attributed to the armed forces	1	-	-	-	-	1
Violations attributed to FMLN	22	12	13	11	16	74
Unattributable	3	-	-	-	-	3
Total admissible complaints	396	288	303	272	267	1 526
Inadmissible complaints	97	118	148	208	296	867
Total complaints received	493	406	451	480	563	2 393

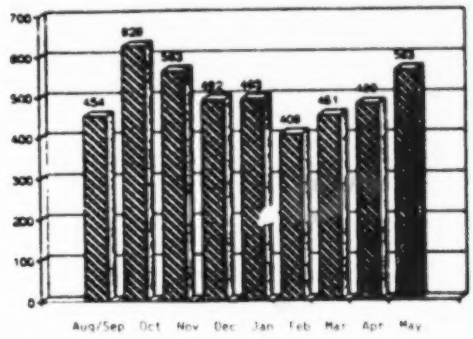
a/ The total or partial figures included refer to complaints received and should not be construed as an affirmation by ONUSAL that the violations actually took place.

b/ "Armed forces" includes the following defence institutions: army, air force and navy, security bodies, civil defence and territorial services.

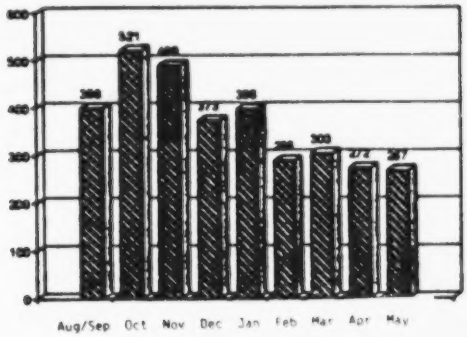
Percentage complaints by rights



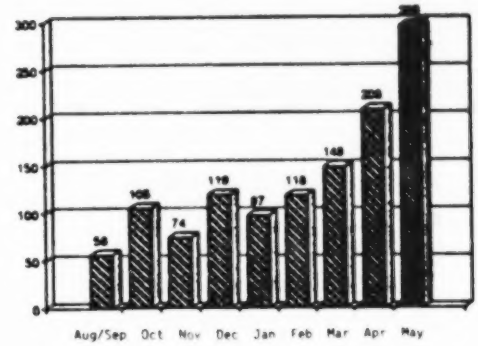
Complaints received



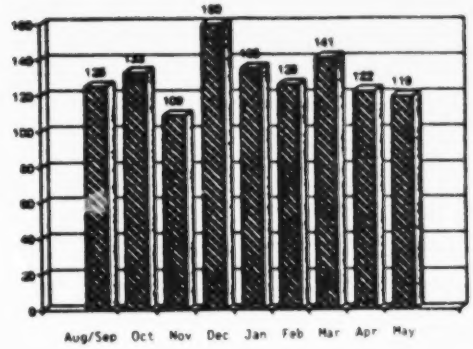
Admissible complaints



Inadmissible complaints

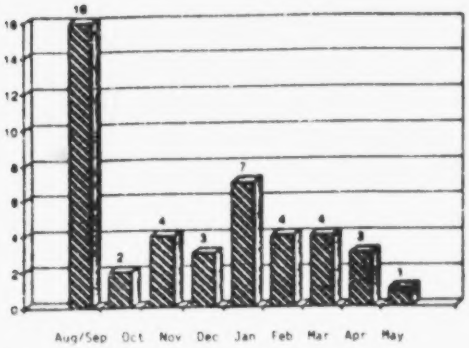


Right to life

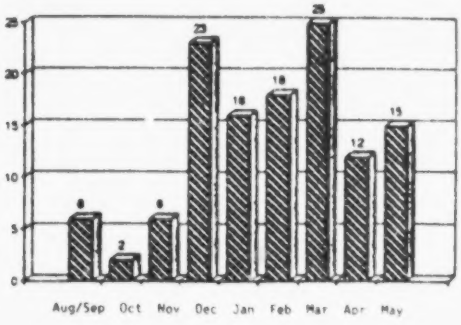


/...

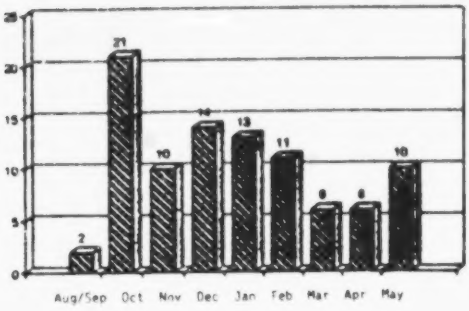
Executions attributed to Salvadorian armed forces



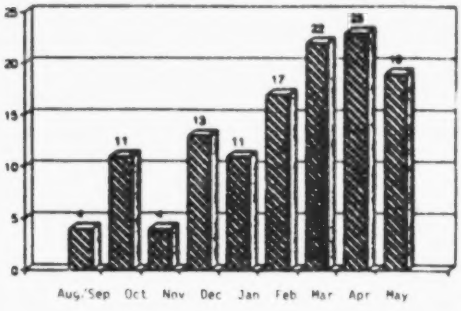
Executions attributed to other groups and unknown parties



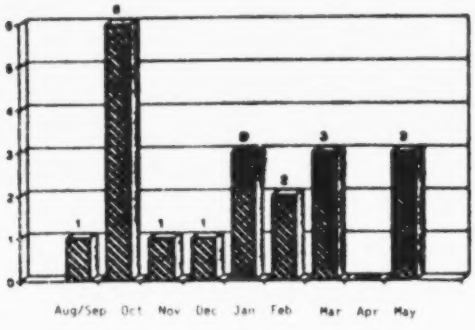
Death threats attributed to the armed forces



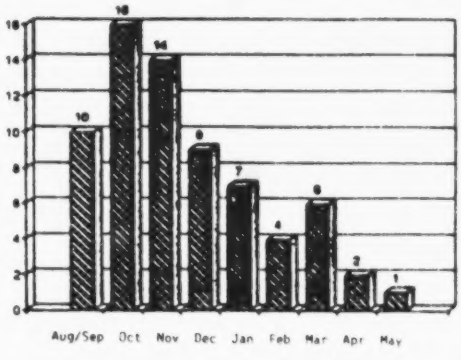
Death threats attributed to other groups and unknown parties



Enforced disappearances attributed to the armed forces

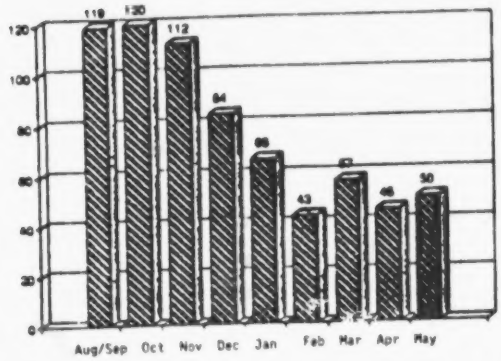


Abductions attributed to FMLN

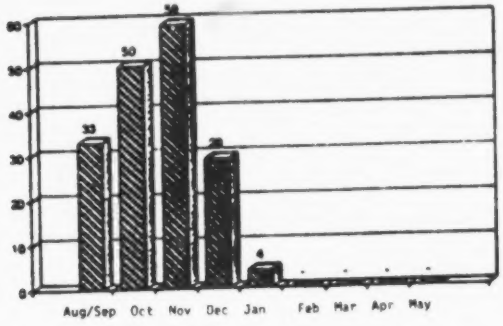


/...

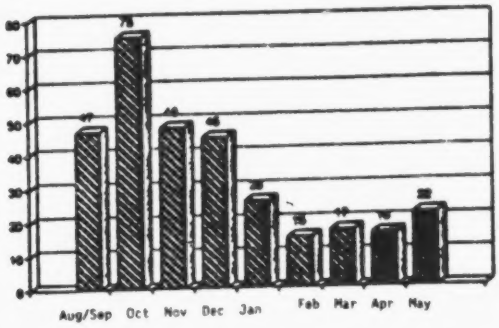
Illegal or arbitrary detention



Violations of humanitarian law attributed to the armed forces



Violations of humanitarian law attributed to FMLN



APPENDIX II

Statistics from government sources

Table 1. Statistics from the Human Rights Office of the Armed Forces General Staff

Violations of human rights by FMLN

Category	April	May	Total
Murders of civilians	3	2	5
Persons injured or maimed	-	-	-
Assaults	14	6	20
Abductions of civilians	10	10	20
Acts of violence or threats against civilians	16	7	23
Forcible recruitment of children under 15	-	-	-
Persons killed by mines	-	-	-
Persons killed during attacks	-	-	-
Persons maimed or injured by mines	2	12	14
Rapes	1	2	3
Attacks on property (robbery)	7	11	18
Unlawful seizures of land	5	5	10
War taxes	1	-	1
Forcible indoctrination	-	5	5
Attacks	-	8	8
Total	59	68	127

Source: "Statistical information on human rights violations for the months of April and May 1992", Human Rights Office of the Armed Forces General Staff.

Table 2.A. Complaints received by the governmental Human Rights Commission

Category	April	May	Total
Threats	5	3	8
Injuries	-	2	2
Rapes	-	-	-
Disappearances	21	29	50
Arrests	2	2	4
Abductions by FMLN	-	-	-
Murders	2	-	2
Other	-	-	-
Total	30	36	66

B. Deaths and injuries as a result of the violence in El Salvador

Category	April	May	Total
Deaths as a result of actions attributed to members of FMLN	2	1	3
Deaths as a result of actions attributed to members of the armed forces	2	-	2
Deaths as a result of actions by unidentified persons	13	25	38
Injuries as a result of actions attributed to members of FMLN	3	1	4
Injuries as a result of actions attributed to members of the armed forces	17	2	19
Injuries as a result of actions by unidentified persons	24	34	58
Total	61	63	124

Source: Human Rights Commission (governmental).

APPENDIX III

Statistics from non-governmental sources

Table 1. Statistics from the Legal Protection Office of the Archdiocese of San Salvador

Category	April	May	Total
Persons arrested	1	1	2
Persons arrested and disappeared	-	6	6
Persons disappeared	-	3	3
Persons arrested and later released	1	1	2
Persons abducted by FMLN	-	-	-
Prisoners of war held by FMLN	-	-	-
Forcible recruitment by FMLN	-	-	-
Deaths attributed to death squads	3	7	10
Deaths attributed to the armed forces	2	2	4
Deaths caused by explosive devices, responsibility unknown	-	-	-
Deaths caused by explosive devices, attributed to the armed forces	-	-	-
Deaths caused by explosive devices, attributed to FMLN	-	-	-
Deaths occurring during cross-fire, responsibility unknown	-	-	-
Deaths occurring during cross-fire, attributed to the armed forces	-	-	-
Deaths occurring during cross-fire, attributed to FMLN	-	-	-
Deaths occurring during army operations (civilians and combatants)	-	-	-

Table 1 (continued)

Category	April	May	Total
Deaths occurring during clashes, ambushes or army patrols (civilians and combatants)	-	-	-
Murders attributed to FMLN	-	-	-
Army and security force casualties	-	-	-
Total	7	20	27

Source: Legal Protection Office of the Archdiocese of San Salvador.

Table 2. Statistics from the Human Rights Commission of El Salvador (non-governmental)

Category	April a/	May b/	Total
Political arrests	4	37	41
Disappearances attributed to the armed forces	1	-	1
Disappearances attributed to FMLN	-	-	-
Other disappearances c/	1	4	5
Deaths attributed to the armed forces	1	2	3
Deaths attributed to FMLN	-	-	-
Deaths caused by unidentified persons	1	3	4
Deaths under unidentified circumstances	-	-	-
Forcible recruitments	-	-	-
Total	8	46	54

Source: Human Rights Commission of El Salvador (non-governmental).

a/ The sole source of the April statistics is complaints received by the same institution providing the figures.

b/ The sources of the May statistics are complaints received by the same institution issuing the figures, and information published by the media in El Salvador.

c/ This category includes both the disappearances under unidentified circumstances, six in all, being those cases in which the circumstances of the disappearance are unknown, as well as two disappearances attributed to unidentified persons in civilian dress, heavily armed, and acting under the direct or indirect protection of the State.